

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CP ANCHORAGE HILTON

and

Case 19–CA–241411

UNITE HERE! LOCAL 878

Kristin White, Esq. and
Rachel Stopchinski, Esq.,
for the Acting General Counsel.
Renea Saade, Esq. and
Adam Gottschalk, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried virtually using the Zoom for Government platform on December 1–4, 2020.¹ Unite Here! Local 878 (the Charging Party or Union) filed the initial charge on May 10, 2019, and an amended charge on July 31. The General Counsel issued the complaint on September 20, and CP Anchorage Hilton (the Respondent or Anchorage Hilton) filed a timely answer denying all material allegations.

The complaint alleges the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by threatening employees with discipline for failing to meet cleaning quotas, and violated Section 8(a)(5) and (1) by refusing to provide requested information and changing the housekeepers' duties by requiring them to spend more time per room while still meeting the same room-cleaning quota.

¹ The use of Zoom to conduct hearings during the COVID-19 pandemic has been a necessary temporary adjustment. I note, however, that it resulted in many instances of audio interference or difficulty hearing witnesses and attorneys due to poor audio quality, as reflected in the transcript on pp. 6, 12, 15, 18, 77, 106, 147, 187, 225, 227, 228, 230, 239, 242, 245, 246, 251, 256, 267, 268, 269, 271, 274, 277, 286, 322, 304, 308, 312, 321, 323, 324, 326, 327, 328, 333, 339, 351, 358, 367, 369, 403, 422, 423, 434, 454, 460, 466, 475, 522, 548, 552, 557, 563, 565, 566, 650, 651, 668, 677, and 750.

The complaint was amended on September 23, 2019, to seek an order requiring the Respondent to pay its housekeepers who have worked since November 5, 2018, for the wages and other benefits lost, including the opportunity to earn additional money for cleaning extra rooms, until (1) The Respondent bargains to agreement with the Union about housekeeper duties in cleaning renovated guest rooms; (2) The Respondent reaches a bona fide impasse in bargaining with the Union; (3) The Union fails to timely request bargaining or commence negotiations after receipt of the Respondent's notice of its desire to bargain; or (4) The Union fails to bargain in good faith. The Respondent submitted a timely answer denying such relief was appropriate.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Acting General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation, operates a hotel in Anchorage Alaska, where, during the relevant time period, it derived gross revenues in excess of \$500,000 and purchased and received at the facility goods valued in excess of \$50,000 directly from points outside the State of Alaska. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background on the Respondent and the Union

The Anchorage Hilton is a full-service hotel located in downtown Anchorage, Alaska. The hotel has roughly 600 rooms in two buildings, the Anchorage tower and the west tower, which are connected via walkway. The west tower has two sections—the old west tower and the new west tower. Like most hotels, the Anchorage Hilton has a variety of rooms, including rooms with one king-sized bed, rooms with two queen-sized beds, and some suites.

This case concerns the work of the housekeepers (also referred to as room attendants) and the impact of a major renovation on their work. Mike Just was the director of housekeeping from January 2018 to July 2019. He was responsible for ensuring rooms were cleaned according to standards and meeting the labor goals. He directly oversaw the assistant director of housekeeping, Margarita Andino, and three housekeeping supervisors.² Just reported to Steve Rader, the Respondent's general manager.³ Brandon Donnelly was the director of rooms from March to November 2017, and then was director of operations from November 2017 until

² The housekeeping supervisors are bargaining-unit employees.

³ At the time of the hearing, Rader was no longer working at the hotel. Ryan Akkaya succeeded Rader as general manager.

December 2018. Travis Merrigan succeeded Donnelly as director of operations. Christine Talley was human resources director.

Daniel Esparza and Darya Valades were the union officials who interacted with management regarding the renovations and the housekeepers during the relevant time period.⁴ When the union representatives visited the Anchorage Hilton, their access was limited to common areas such as the lobby and the break room, which was in the basement. If a union representative wanted to inspect a guest room, he or she needed to send a letter to the Respondent's management requesting access. (Tr. 329.)⁵

At all relevant times, the Union represented the following bargaining unit:

All full-time and part-time banquet bartenders, banquet captains, banquet servers, banquet housemen, baristas, bellmen, bell captains, bruins bartenders, bus persons, cashiers, coat check/room check attendants, cocktail servers, concierges, cooks, dishwashers/stewards, doormen, front desk/PBX employees, hosts/hostesses, housekeeping clerks, housekeepers/room attendants, housemen, housekeeping inspectors, laundry presser/chute employees, laundry washers, maintenance employees, maintenance supervisors, night auditors, purchasing employees, restaurant servers, and room service employees employed at the facility located at 500 West 3rd Avenue, Anchorage, Alaska.

The Hilton Corporation and the Union entered into a collective-bargaining agreement effective September 1, 2004 to August 31, 2008. (Jt. Exh. 15.) Columbia Sussex Corporation purchased the hotel on December 28, 2005 and recognized the Union as the exclusive bargaining-representative of the bargaining-unit employees. No successor agreement was reached and on April 9, 2009, the Respondent unilaterally implemented its last best and final offer. (Jt. Exhs. 3–4.)

The Respondent implemented a revised last best and final offer (the final offer) on March 11, 2016, and that offer governs the terms and conditions of the covered employees during the time period relevant to this decision. Article XXXVI of the revised terms outlines the duties of several classifications of employees, including:

5. Housekeeper/Inspector: Assists in the supervision, direction and training of Housekeeping personnel. Is primarily responsible for the general inspection of all work performed by Housekeeping personnel assigned to his/her area of responsibility. Prepares all required incidental reports and may be required to do rooms on a need only basis. May assist in laundry once all seniority options have been exhausted. May assign rooms.

...

⁴ Esparza worked for the Union until April 31, 2020. At the time of the hearing, Valades still worked for the Union.

⁵ Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for the Acting General Counsel's exhibit; "R Exh." for the Respondent's exhibit; "Jt. Exh." For joint exhibit; "GC Br." for the Acting General Counsel's brief, and "R Br." for the Respondent's brief. Although I have included some citations to the record, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based on my review and consideration of the entire record.

8. Room Attendant: Makes beds, vacuums and/or sweeps rooms, dusts. Cleans private baths and all room fixtures, and wipes down woodwork and doors. Heavy cleaning of guest doors will be done by housemen. However, wiping of doors will be done by Room Attendants. Cleans inside window of smudges, fingerprints, etc. Vacuums immediate threshold area in front of guest room door. No cleaning of halls, hoppers, public baths or overhead work may be required of Attendants.

9. Houseperson: Helps Room Attendants perform heavy lifting duties required in the housekeeping details or guest rooms; load and/or unloads supply and linen carts/closets which may be required by Room Attendants; shampoos carpets and upholstered furniture, cleans woodwork in rooms, washing windows, changes light bulbs in guest rooms, hangs curtains and draperies. Sweeps and mops all employee corridors and hallways. Changes TV remote batteries. Cleans black scuff marks of hallway walls. Vacuums hallways and corridors.

The final offer contains the following management-rights clause at section 4:

All Employer rights and functions, except those which are clearly and expressly limited in this Agreement, shall remain vested exclusively in the Employer, including but not limited to:

A. The right to determine the work to be done by employees covered by this Agreement. [TA'd 8-1-08]

B. The methods, process and means of perforating any and all work, the control of the property and composition, assignment, direction and determination of the size of its working forces. [TA'd 8-1-08]

C. The right to change or introduce a new or improved operations, methods, means or facilities, the Employer will send a courtesy notification to the Union seven (7) working days prior to such change. [TA'd 8-1-08]

D. The right to hire, schedule, promote, demote, transfer, release and lay off employees: and the right to suspend, discipline and discharge employees for cause and otherwise to maintain an orderly, effective and efficient operation. [TA'd 8-1-08]

E. The right to control the nature and specification of all materials used in its operations, and specifications of the products and services it offers to its guests, and to change, add to or eliminate such specifications in whole or in part. [TA'd 9-5-08]

F. The right to transfer work elsewhere, by subcontracting or other means, and to contract for temporary labor, without restrictions.

G. The right to transfer employees between jobs, shifts and departments, and to determine or change the duties of jobs.

H. The right to modify or abolish any past practice not in this Agreement.

I. The right to close operations, wholly or partially.

J. These rights are limited only to the extent that this Agreement specifically so provides and may be exercised without prior consultation with the Union. However, whenever a decision to cease operations (wholly or partially), or to transfer work elsewhere, will result in the layoff of employees covered by this Agreement, the Employer will notify the Union in advance of the decision, and will, upon request, discuss the effects of the decision with the Union.

(Jt. Exh. 15.)

B. Housekeepers' Work and the Renovations

The housekeepers are expected to clean 17 rooms per 8-hour workday.⁶ They have discretion about specific cleaning methods and practices. Housekeepers typically are assigned a mixture of rooms with some having one king bed and others having two double beds. Housekeepers who clean more than 17 rooms during a shift receive a bonus of \$4.95 per room. The bonus can only be earned if the housekeeper finishes her room quota and the additional room(s) during her regular 8-hour shift. (Tr. 47–49; Jt. Exh. 15.) Housekeepers who have to clean 12 or more rooms where the guest has checked out are required to clean 16 rooms rather than 17. Housekeepers who work on three or more floors or have to travel to different towers are also assigned 16 rooms. A housekeeper assigned 12 or more checkouts on three or more floors is assigned 15 rooms. (Jt. Exh. 15.)

The hotel underwent a major remodel, with 60 rooms taken out of service at the end of 2017, and renovations starting on February 26, 2018. (Jt. Exh 6.) As part of the renovation, old bathtub/showers with shower curtains (old bathtubs) were replaced with walk-in glass-walled showers (new showers) in around 300 rooms. The higher floors in the new west tower have more new showers, and all of the rooms on the third floor and higher in the Anchorage tower have new showers. (Tr. 54–60.) The glass walls of the new showers measure 60 inches wide by 76 inches tall. (Jt. Exh. 9.)

The old bathtub rooms have shower fabric shower curtains with an inner lining. The housekeepers clean the shower curtain and its lining by spraying them and wiping them down, and they wipe the shower rods. If a shower curtain is permanently stained, a houseman replaces it. The housekeeper cleans the tiled walls of the bathtub area by wiping them down with cleaner.

Housekeepers were given squeegees for cleaning the new glass showers. Some housekeepers use the squeegees, others use rags. The housekeepers clean both sides of the glass. They also clean an area where the sliding glass door overlaps with the stationary glass. They

⁶ The work shift includes a 30-minute lunch hour and 10–15 minute breaks every 2 hours. At the time of the hearing, the quota had been reduced to 15 rooms due to enhanced cleaning implemented because of the COVID-19 pandemic.

wipe the area underneath the sliding glass door and remove a grated metal drain to clean it. To clean areas that are too high to reach, housekeepers use brooms or other tools with extensions.

5 The renovations included the addition of sofa-beds in some rooms, including most of the king bed rooms in the west tower. (Jt. Exh. 10.) Prior to the renovations, only the suites had sofa-beds. If a guest has used the sofa-bed, the housekeeper must strip the sheets and fold the bed back into the sofa. An inspector then reviews the room to ensure the sofa is not dirty.

10 All rooms in the hotel received new pillows around the same time period as the renovations. This was due to implementation of a Hilton brand standard that was unrelated to the renovation. Before the change, there were three pillows per double bed. Since the implementation of the brand standard, there are four. The new pillows are heavier and longer than the old pillows.

15 All rooms also received new furniture as part of the renovation. (R Exh. 9.) The old rooms had freestanding beds with bed skirts. Housekeepers removed reachable items from under the bed and vacuumed under the bed to the extent possible. They also looked behind the bed and removed any items they could reach. The new beds are affixed to the wall and the floor. In the old rooms the television sat on an entertainment stand. In the new rooms the television is
20 mounted to the wall. The desk chairs in the old rooms had a fabric seat with legs that rolled. In the new rooms, the desk chair is leather and has four legs. The old rooms had wallpaper and the new rooms have paint. The lamps were also replaced in all rooms.

25 In February 2019, housekeepers Yocasta Guerrero, Ana Ynfante, and Sung Hee⁷ complained to Just that some housekeepers were not cleaning all of their required rooms. They felt it was unfair that they had to continue cleaning 17 rooms with the new showers when others weren't meeting their quotas. (Tr. 103.) On February 28, Just held a meeting where he presented the housekeepers with a document reminding them of the room quotas and stating that failure to comply would result in discipline, up to and including termination. The housekeepers were
30 instructed to sign and date the document.⁸ (Jt. Exh. 13.) Just presented the signed document to Rader, who instructed him not to discipline employees immediately because there was a learning curve associated with cleaning the new rooms. (Tr. 442.)

35 On March 26, 2019, at the housekeepers' request, a meeting took place between the Union and management regarding the housekeepers' work duties. Rader, Just, Travis, Talley, and Andino were present for management. Along with the union representatives Esparza and Valades, about 10 housekeepers were present.⁹

40 Housekeepers Yolanda, Yocasta, and Irene said the glass shower doors were hard to clean. Yocasta and Yolanda said cleaning the new showers hurt their arms. Sung Hee, who had

⁷ Hee is erroneously referred to as Lee or He in the transcript.

⁸ On June 12, 2019, housekeeper Vladana Tesic was issued a verbal counseling for cleaning only 13 rooms in 8.42 hours. (GC Exh. 17.) Just had spoken to her about not cleaning enough rooms in the past. (686). On June 28, 2019, housekeeper Larissa Rollins received a verbal counseling for cleaning seven rooms in 7.28 hours. (GC Exh. 15.) Their discipline does not comprise a complaint allegation before me.

⁹ Valades toured a new guest room on March 11, 2019.

worked at the hotel for 20 years, said that cleaning the glass showers was more difficult, and caused her hips, arms, and shoulder to ache. Hee also said she had to use her key to lift up the grates installed in the new showers. The housekeepers also mentioned that the squeegees did not fit in between the pieces of glass, making the overlapping area in the sliding glass door hard to clean. They agreed that the squeegees provided did not always remove the water, chemical spots, and streaks on the glass.

Some of the housekeepers said the size and number of pillows made it harder to finish the rooms on time, and the new pillows barely fit into the pillowcases.¹⁰ Housekeeper Angela said she thought the quota should be reduced to 15 rooms because the renovations had changed the housekeepers' work. Ana Ynpata, who had been at the hotel about 8 years, said she had trouble finishing 17 rooms with the renovations, and said that she had never ended her shift with as few as 14 rooms cleaned prior to the renovations, but she had since. Some housekeepers said it took between 10–25 minutes longer to complete the rooms after the renovations, for a total of 35–40 minutes per room.

Rader told the housekeepers it took time to get used to the new showers and they would receive training and new tools. He also said they would get used to the work over time. After the meeting, Just told the housekeepers that Hilton was bringing in trainers from a cleaning company to train them on how to clean the shower doors faster. No such training took place before Just left the Anchorage Hilton in July 2019. (Tr. 94–95.)

Amy Dingle, a housekeeper who began working for the Anchorage Hilton in December 2018, cleaned both renovated and unrenovated rooms.¹¹ She found it easier to clean the older unrenovated rooms because the tub was easier for her to clean than the glass shower. Dingle is 5'1" tall and finds it hard to reach upper part of the showers, which are taller than the shower curtains in the old bathtub rooms. It takes her about 15 minutes to clean the shower, about 20–25 minutes to clean an unrenovated room, and 30–45 minutes to clean a renovated room. (Tr. 140–142.) Dingle also worked at the Westmark Hotel, both prior to and concurrent with her work at the Anchorage Hilton. She was expected to clean 15 rooms at the Westmark and told Just she thought 15 rooms was more appropriate than 17.¹² (Tr. 156–159.)

Mai Lee worked as a housekeeper at the Anchorage Hilton from 2015–May 20, 2020.¹³ According to Lee, the new pillows were heavier and it took her more time to change the pillowcases. (Tr. 250.) Lee found the new showers harder to clean because there is more area to clean. She tried using the squeegee but did not like it. She testified:

It is much easier to do the tub because I would just spray the chemicals onto the tub and then I would wash it down and turn on the water, and the water can just wash the tub. And then I would just clean the wall and spray down the shower curtains on the side. So

¹⁰ Just disputes it takes longer to put the new pillows into the pillowcase. (Tr. 83–84.)

¹¹ The term "unrenovated" is used with the recognition that all rooms received new furniture, carpet, paint, lamps, and other decor.

¹² Reduction in room quota from 17 to 15 rooms had been a topic of bargaining prior to the renovations. (Tr. 397.)

¹³ Lee left her job voluntarily. (Tr. 285.)

it's a much easier task than the showers, because I have to do the glass inside and out, and all - and all around.

(Tr. 240–241.) Lee shook out the shower curtain if it was wet and tie it in a knot for the houseman to replace if it was dirty. (Tr. 249.)

Some housekeepers asked not to be assigned the rooms with the new showers, and Just accommodated these requests. (Tr. 98–101.) Lee, who is 4'10" tall, told Andino that it was easier for her to clean the bathtub because it took less time and there were places in the shower she could not reach. She asked to have her room quota lowered, but Andino was unable to get permission to grant this request. Lee was transferred from the 11th floor of the west tower to the 7th floor where the rooms still had the old bathtubs. (Tr. 241, 249, 253.) Aside from the new pillows and showers, in Lee's experience the time and effort it took to clean the guest room was the same before and after the renovation. (Tr. 275.)

Cylene Fedderson works at the Anchorage Marriott. The Marriott and the Hilton have the same showers. At management's request, General Manager Akkaya filmed Fedderson cleaning both the old bathtubs and new showers at the Anchorage Hilton.¹⁴ She prefers cleaning the new showers with a rag rather than a squeegee. She thinks the new showers are easier to clean in part because the tile in the bathtub rooms is smaller and more difficult to clean.¹⁵ (Tr. 743–760.)

C. The Information Requests

On February 28, 2018, Esparza sent Rader a request for information pertaining to the hotel renovations, which stated in relevant part:¹⁶

(1) Identify the tower/floors of the hotel have been/will be subject to renovation and provide a description of all work that has/will be performed.

(2) What is the actual or anticipated start date and completion date of the renovations? If there are different start dates and completion dates for different phases of the renovation, please specify.

...

(6) Will there be a change in any work requirement for bargaining unit members as a result of the renovations? For example, will housekeepers have additional cleaning tasks or workload either during the renovations or as a result of them?

(Jt. Exh 5.)

¹⁴ The videotape was not provided to the Union.

¹⁵ The record does not contain evidence depicting the bathtub rooms at the Marriott, so it is unclear whether or not the tile is the same, in size, age, condition, and any other aspect, as the tile at the Hilton.

¹⁶ The only information requests at issue in the complaint are those sent on November 20, 2018. The earlier requests are included in the statement of facts because the requests and answers provide evidence pertaining to other allegations as well as background evidence.

On March 6, 2018, Rader responded in relevant part:

(1) Renovation will include both towers over two phases. Current phase is focused on West tower. Renovation will include new wall finishing, paint and new carpet. Also, installation of walk in showers in some guestrooms- number to be determined.

(2) Start date for phase one 2/26/2018 finish date 5/31/2018. There is an option to proceed with more room renovations, however a time line has not been established for this work.

...

(6) There should be no changes in work requirements based on the renovation. There may be special projects that are available to staff, based on hotel discretion.

(Jt. Exh. 6.) Due to a number of factors, phase one renovations were not completed by May 31, 2018.

On June 19, 2018, Esparza sent another request for information to Rader. He asked:

(1) What is the status of the current phase of renovations? When was it completed or if not complete, when is the expected date for completion?

...

(5) Please describe the size of the glass-door and walk-in showers, so we may determine the impact on housekeeper workload.

(Jt. Exh. 7.) Esparza sent a follow-up request on July 2.

Rader responded on July 3, stating the renovations were expected to be completed by the end of the year. He responded that no rooms had yet been converted into showers and it was still being determined which rooms would get showers. Rader also stated that there was no set date for changing out other amenities. He said he would respond to any unanswered questions shortly. (Jt. Exh 8.) On July 6, Rader provided an attachment showing the model of the shower, sized 60 inches wide by 76 inches tall. (Jt. Exh. 9.)

On November 20, 2018, Esparza sent Rader another request for information, the one at issue here, which states in relevant part:

(1) Provide a detailed update on the status of renovations and the extent of work to date. Has work started on the Anchorage tower? If so, when did it start? Has work been completed on the old West Tower? If so, what was the completion date? If not, provide a description of what work remains in what floors/rooms. Provide a description of the status of work.

(7) As of July 3rd, 2018, you stated that no rooms have been converted yet to showers. It is still being determined which rooms will receive showers. On July 16th, 2018, you

provided a quote for shower glass. Provide updates on the status of the guest room bathroom changes to walk-in showers:

- a. How many guest rooms will be converted to walk-in showers?
- b. Which rooms/floors will be (or have been) converted?
- c. What classifications of employees will be used to clean the glass shower door?
- d. . . .
- e. What if any tools does the employer consider appropriate for cleaning glass-shower doors? Provide manufacturer's specifications for all such tools.
- f. What if any training has been or will be conducted with respect to cleaning glass-shower doors? Provide copies of all training materials

In the Union's experience, the introduction of glass shower doors has a material impact on the workload of housekeepers due to the increased physical demands involved with the task, the difficulty of cleaning glass without leaving water spots, and the impact upon work rate owing to the introduction of a more time-consuming work process. Accordingly, before any housekeeper is required to engage in this task, the Union requires that the parties agree to appropriate time-and-motion studies in order both that the work may be performed safely and that it does not result in any increase to the status quo with respect to housekeeper workload. Please advise when we might confer regarding this.

(Jt. Exh. 11.) Esparza asked for a response within 15 days. On November 30, 2018, Anchorage experienced a 7.0+ earthquake which caused disruptions area-wide, including to the Anchorage Hilton.

Rader responded on December 6, 2018, stating:

The Hilton Anchorage is in receipt of the Union's request for information dated November 20, 2018. We are working on our response to the requests and expected to have the same to you this week. However, due to the recent earthquake and related events, we could use some additional time to provide you with the hotel's response. We should have a more substantive response to you by the end of next week (Friday, Dec. 14th). In the meantime and in partial response to the Union's requests, please be advised that the renovations in the Old West Tower were complete as of November 5, 2018. The renovation work in the Anchorage Tower began September 24, 2018. We can also assure you that all persons engaged in the work being performed have been adequately trained and have the necessary qualifications for the work they are performing. And, all work is being supervised and overseen by credentialed contractors. As I believe you are aware, the overall general contractor for the project is Express. And, the environmental consultant working on the project is EHS. For your reference, copies of the 57 training certifications provided to us by these contractors are enclosed.

(Jt. Exh. 12.) Esparza had not been informed of these dates and had not seen the renovated rooms. (Tr. 330).

5 Rader provided an additional response on January 4, 2019, answering request number 7 in relevant part:

Under current plans, a total of approximately 300 showers will be completed and located throughout both towers.

10 Staff are expected to clean the glass shower doors to the same standards expected for other glass in a guest room (glass mirror or window for example). Shower doors are expected to be cleaned on both sides, as are shower curtains. In other words, rooms with bathtubs still require the cleaning of two shower curtain surfaces (inside and outside), and there is less surface area to clean in a room with a shower door. Add to that that the staff has been providing input on the shower door cleaning process. Various cleaning products and tools are made available to the staff members who are invited to give their feedback on which products and/or tools work best.

20 Based on the information we currently have, we do not believe it takes staff more time to clean rooms with walk-in showers than it does those rooms with bathtubs. In fact, given the other improvements in them, we believe it will take less time to clean the remodeled rooms with walk-in showers than the rooms with bathtubs. Nevertheless, management continues to evaluate this situation; we are willing to review and consider any information or studies the Union might have and/or to meet to discuss any information or concerns the Union or staff may have.

(Jt. Exh. 12.)

30 The response did not indicate the floors on which the showers would be located. The list of tools to be used and manufacturer's specification for the tools was not provided.¹⁷ There was no answer as to what training would be provided. At the time of this response, the Respondent had not bargained with the Union over whether the glass showers required additional work, or about any aspect of the renovations. (Tr. 332–333.) Rader did not respond with a time to meet and requested the Respondent conduct time-and-motion studies.

III. DECISION AND ANALYSIS

A. *Alleged Unilateral Change of Housekeepers' Duties*

40 Complaint paragraphs 8 and 10 allege the Respondent violated Section 8(a)(5) and (1) of the Act by changing the housekeepers' duties by requiring them to spend more time per room

¹⁷ Rader said that the response to the classification of employees and the tools to be used could be inferred by stating that the shower doors will be cleaned to the same standards glass mirrors or windows. (Tr. 425–426.) Rader said there were no tools to identify, but the record makes clear the housekeepers were provided with squeegees. (Tr. 512.)

while still maintaining the same room quota without providing the Union notice and an opportunity to bargain.

Well-settled law provides that an employer may not change the terms and conditions of employment of represented employees without providing their representative with prior notice and an opportunity to bargain over such changes. *NLRB v. Katz*, 369 U.S. 736, 747 (1962). The fact that a particular working condition or benefit is not expressly embodied in the governing collective agreement is immaterial where satisfactorily established by practice or custom. See *Citizens Hotel Co.*, 138 NLRB 706, 712–713 (1962), *enfd.* 326 F.2d 501 (5th Cir. 1962); *Frontier Homes Corp.*, 153 NLRB 1070, 1072–1073 (1965); *Central Illinois Public Service Co.*, 139 NLRB 1407, 1415 (1962), *enfd.* 324 F.2d 916 (7th Cir. 1963).

Finding a change in the terms and conditions of employment does not end the inquiry, however, because the duty to bargain only arises if the changes are “material, substantial and significant.” *Alamo Cement Co.*, 281 NLRB 737, 738 (1986); *Flambeau Airmold Corp.*, 334 NLRB 165, 171 (2001). The Acting General Counsel bears the burden of establishing this. *North Star Steel Co.*, 347 NLRB 1364, 1367 (2006).

I find the changes to the rooms, most significantly the new glass showers, but also the addition of a pillow to each queen bed and the addition of sofa sleepers to many of the king bedrooms were, all told material, substantial, and significant.¹⁸ The Union was not notified of these changes or given an opportunity to bargain over how they would be implemented or how these changes would impact the housekeepers’ work.¹⁹

The weight of the evidence, including the credible testimony of housekeepers Amy Dingle and Mai Lee, establishes that cleaning the glass showers is more physically difficult and time-consuming than cleaning the tubs with the shower curtains.²⁰ The housekeepers spray the shower curtains and at most wipe them with a towel in a rather cursory fashion.²¹ A stained

¹⁸ The parties point to numerous other changes in furniture and décor to support their respective positions. With regard to wiping of surfaces in the bedroom, Just acknowledged it did not take much time or effort, and I do not find these changes material, substantial, or significant. (Tr. 612.) Even without the addition of pillows and sofa sleepers, I would find the changes to the bathroom alone to be material, substantial, and significant. Obviously, changing an extra pillowcase and making a sofa-bed or changing its sheets will add to the time it takes to clean the room. I do not consider whether that time is sufficient on its own to meet the threshold because it is considered in conjunction with the new showers.

¹⁹ The Acting General Counsel does not contend that the Respondent was obligated to bargain over the decision to undergo the renovations. (GC Br. 48.) The Acting General Counsel does contend, however, that the Union should have been given notice and an opportunity to bargain *before* the specific elements of the renovations that impacted the housekeepers’ work were implemented.

²⁰ The testimony of Dingle and Lee corroborates the hearsay testimony regarding what other housekeepers complained about at the meeting regarding the difficulty of cleaning the renovated shower rooms. Though I rely predominantly on the non-hearsay testimony of Lee and Dingle, I find the corroborated hearsay bolsters the Acting General Counsel’s contention that cleaning the new rooms is more difficult and time-consuming. See *Midland Hilton & Towers*, 324 NLRB 1141 (1997); *RJR Communications, Inc.*, 248 NLRB 920, 921 (1980); *Rome Electrical Systems*, 356 NLRB 170 n. 4 (2010).

²¹ Just admitted he did not convey to the housekeepers the expectation that they clean the inside liner of the shower curtains. (Tr. 120–121.)

shower curtain is replaced. The new showers, by contrast, require the housekeeper to clean a 63-square-foot glass area, removing any smudges and water marks, and ensuring the glass is streak-free.

5 In particular, I found both Dingle and Lee to be credible witnesses. Dingle, who is a current employee, testified consistently and credibly and consistently that the old rooms were easier to clean. Testimony from current employees tends to be particularly reliable because it goes against their pecuniary interests. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304, 1304 fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 10 47, 48 (1971); *Federal Stainless Sink Div. of Unarco Industries*, 197 NLRB 489, 491 (1972).

The Respondent contends that Dingle’s testimony should be discounted because she did not work at the hotel pre-renovation. The evidence shows, however, that she cleaned both renovated and unrenovated rooms. The Respondent also contends that Dingle worked with a 15 partner who cleaned the bathroom for her. This only occurred, however, when Dingle worked the night shift, and the unrefuted testimony establishes that Dingle worked both day and night shifts.

The Respondent’s attempt to attack Lee’s credibility because she did not testify in her 20 native language is unpersuasive and regrettable. (R Br. 6, fn. 21.) First, the premise is false—Lee testified in her native language through a Hmong interpreter. (Tr. 232.) The Respondent points to certain transcript pages to support the suggestion that somehow a language problem confused Lee. This contention is simply unfounded, either on the transcript pages the Respondent cites, or on the record as a whole.²² Lee, who had left her job at the Anchorage 25 Hilton voluntarily at the time of the hearing, had no incentive to be dishonest. I found her demeanor to be forthcoming, undramatic, and honest.

The Respondent argues that cleaning the glass shower is no more time consuming than cleaning the old tub showers with the shower curtains, as Fedderson demonstrated on the video. 30 (R Exh. 25.) Fedderson, however, never worked at the Anchorage Hilton. She had a different chain-of-command than the Anchorage Hilton housekeepers. Fedderson’s attention to detail with the shower curtains at the Marriott may or may not have been the practice among the housekeepers at the Marriott. There is no evidence, however, to establish that housekeepers who actually worked at the Anchorage Hilton cleaned the shower curtain in the manner Fedderson did 35 at the Marriott. To the contrary, the evidence shows it was the practice of the housekeepers at the Anchorage Hilton to spray the shower curtain and wipe it or shake it out, leaving any stained curtain to be replaced.

²² The Respondent suggests that Lee’s testimony is not credible because there were not enough shower curtains in inventory to regularly replace them. Lee testified, however, that maybe one or two shower curtains per shift needed to be replaced. (Tr. 248.) It is clear to me from her testimony that when she was asked whether she “cleaned” the shower curtains, Lee’s response pertained to curtains with visible stains. The Respondent also asserts the Union coerced at least one of the housekeepers. (R Br. 19.) The record shows the Union informed the housekeepers of their obligations to comply with a subpoena and does not lead me to infer coercion. (Tr. 733; R Exh. 28.)

The Respondent contends that the “overwhelming testimony from the witnesses that have actually worked in housekeeping and are familiar with the old and new furniture, carpet and other appointments established that it was faster and easier – not more difficult and time consuming to clean the remodeled rooms.” (R Br. 21.) It is notable, however, that the testimony
 5 relied upon to support this argument comes from managers, who do not clean rooms on a regular basis, and a housekeeper from a different hotel who was promoted to supervisor about 6 months after the Respondent solicited her to make the afore-mentioned video.²³ Not a single Anchorage Hilton housekeeper testified that the new rooms were easier to clean than the old rooms.²⁴ Just even acknowledged that glass is more difficult to clean than a non-reflective surface. When
 10 discussing the replacement of mirrored glass doors in some rooms, Just testified:

There is less glass, yes, but they would be wiping down the wood door as well as the glass door. It’s obviously a lot -- you know, it does take more time to clean the whole closet door. You get people’s fingerprints and everything on it, but -- and that, obviously,
 15 you couldn't see with the -- the wood.

(Tr. 622.)

The Respondent cites to *Bohemian Club*, 351 NLRB 1065, 1066 (2007), and some other
 20 cases to argue that to be material, substantial, and significant, a change must involve implementation of a significantly different task that was previously done by someone else. While *Bohemian Club* certainly stands for the proposition that the addition of new tasks previously performed by others requires notice and bargaining, it does not even suggest, much less hold, that this is a minimum threshold.²⁵

25 The Respondent asserts a timeliness violation, stating that the Union knew about the remodel since 2017. There is no evidence to show that the Respondent informed the Union about the renovations generally, or the particular changes to any particular guest rooms that

²³ Rader testified that he is 6’3” tall, and his height was close to the height of the showers. (Tr. 454.) The showers are 3 inches taller than Rader, so his experience cleaning them is going to be different than a much shorter housekeeper. Rader has performed only touchup cleaning in the guest rooms.

²⁴ The Acting General Counsel asks that I draw an adverse inference based on the Respondent’s failure to call any of its housekeeping staff to testify the renovation did not result in an increased workload. (GC Br. 37–38.) “The Board has long recognized that an adverse inference may be raised by the failure of a party to produce available evidence.” *Iron Workers Local 600 (Bay City Erection)*, 134 NLRB 301, 306 fn. 11 (1961). Because the Respondent attempted to refute Dingle and Lee’s testimony with only the testimony of managers and a housekeeper from a different hotel, I infer that none of the Respondent’s housekeepers, including housekeeping assistant director Margarita Andino or any housekeeping supervisor, would have testified in the Respondent’s favor. I note my decision would be the same regardless of any inference.

²⁵ The same holds true for the other cases the Respondent cites: *Fancy Dan’s Jet Inn Restaurant*, 213 NLRB 709, 713–714 (1974); and *Ironton Publications*, 313 NLRB fn. 3, 1211 (1994), enfd. mem. 73 F.3d 362 (6th Cir. 1995). Likewise, none of these cases establishes a minimum time threshold, as the Respondent argues. The Respondent cites to the administrative law judge’s analysis in *Alan Ritchey, Inc.*, 359 NLRB 396, 442 (2012), to assert that changes in the manner in which work is performed may, in many instances, not meet the material, substantial and significant standard. In this instance, however, the standard was met.

would impact the housekeepers' work, prior to starting and continuing to proceed with them.²⁶ Indeed, on March 6, 2018, Rader informed the Union that there should be no changes in work requirements based on the renovation. ((Jt. Exh. 6.) In any event, the Union did request to bargain over the housekeeper workload in a November 20, 2018 letter. (Jt. Exh. 11.) It is clear the impact of the renovations on the housekeepers' workload evolved over the course of the renovation, which was still underway well within the 6-month statutory time period. I therefore reject any timeliness defense.²⁷

The Respondent also asserts in its answer that there was no obligation to bargain before "remodeling guest rooms at issue, reducing or modifying the work duties, and/or introducing new resources, equipment or supplies for staff to use at their discretion." To the extent the Respondent is relying on the management-rights provision in its final offer, this argument runs counter to Board law. The Board has held that a broad unilaterally-implement management-rights clause following a bargaining impasse does not justify subsequent unilateral changes in unit employees' terms and conditions of employment.²⁸ *Raven Services Corp.*, 331 NLRB 651, fn. 3 (2000), reconsideration denied, *Raven Government Services*, 336 NLRB 991 (2001).

The Respondent does not claim to know what specific proposals the Union would have made regarding the changes, or what alternative solutions the give-and-take of bargaining might have generated as to the specifics of the renovation's implementation and its effects on the housekeepers' work. Based on the foregoing, I find the Acting General Counsel has met the burden to prove complaint allegations 8 and 10.

B. *The Alleged Threat*

Complaint paragraphs 6 and 9 allege the Respondent violated Section 8(a)(1) of the Act when, on about February 28, 2019, Respondent, by Mike Just at the facility, threatened employees with discipline for failing to meet cleaning quotas.

On February 28, 2019, Just convened a meeting and presented the housekeepers with a document reminding them of the room quotas and stating that failure to comply would result in discipline, up to and including termination. The housekeepers were instructed to sign and date the document. (Jt. Exh. 13.)

In assessing whether conduct constitutes a threat, the appropriate test is "whether the remark can reasonably be interpreted by the employee as a threat." *Smithers Tire*, 308 NLRB 72 (1992). The actual intent of the speaker or the effect on the listener is immaterial. *Smithers Tire*, 308 NLRB 72 (1992); see also *Wyman-Gordon Co. v. NLRB*, 654 F.2d 134, 145 (1st Cir. 1981) (inquiry under Sec. 8(a)(1) is an objective one which examines whether the employer's actions would tend to coerce a reasonable employee). The "threats in question need not be explicit if the language used by the employer or his representative can reasonably be construed as threatening." *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970). The Board considers the totality

²⁶ The evidence likewise fails to show the housekeepers knew the details about the renovations.

²⁷ For the same reason, any timeliness defense to the information request allegations likewise fails.

²⁸ Even under the management-rights provision, the Respondent was obligated to give the Union a 7-day notice.

of the circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. *KSM Industries*, 336 NLRB 133, 133 (2001).²⁹

I find that, under the circumstances, the February 28, 2019 document, which was presented to the housekeepers in a group meeting, and which they were required to sign under threat of discipline up to and including termination, would be reasonably interpreted as a threat. The room quotas were already part of the housekeepers' terms and conditions of employment pursuant to the Respondent's final offer implemented in 2016, so the February 28 document reasserting the quotas was redundant. I do not doubt that Just presented the "reminder" document to the housekeepers because he had received some complaints about certain housekeepers not meeting their room quotas. Intent, however, is not an element to prove an 8(a)(1) violation. A reasonable housekeeper, in the context of the changes to the rooms resulting from the renovations, would be left wondering why she was being freshly reminded, in writing and with a required signature, of her established room quotas under threat of discipline. Under the circumstances, I find the presentation of and requirement to sign February 28, 2019 document was coercive and violated Section 8(a)(1).³⁰

C. *The Information Requests*

Complaint paragraphs 7 and 10 allege the Respondent violated Section 8(a)(5) and (1) of the Act by failing to respond to a request for information sent on November 20, 2018. The specific information at issue comes from request numbers 1 and 7 of the November 20 information request, as detailed below.

Pursuant to Section 8(a)(5) of the Act, each party to a bargaining relationship is required to bargain in good faith. Part of that obligation is that both sides are required to furnish relevant information upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The employer's duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees' bargaining agent. Like a flat refusal to bargain, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act" without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), *enfd.* 603 F.2d 1310 (8th Cir. 1979). In determining possible relevance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even ultimately reliable. *Postal Service*, 337 NLRB 820, 822 (2002).

²⁹ The Acting General Counsel cites to *Opportunity Homes, Inc.*, 315 NLRB 1210, 1226 (1994), for the proposition that when an employer unilaterally implements changes to working conditions that abrogate union rights, and then threatens employees with potential discipline for running afoul of the changed requirements, it commits a Section 8(a)(1) violation. I do not read that case to stand for such a proposition. I further note that the portion cited to is the administrative law judge's analysis, and it is unclear whether it was the subject of exceptions the Board ruled upon in its decision.

³⁰ I emphasize it is not the fact that Just reminded the housekeepers of their quotas, but the manner in which it was carried out, that was coercive. I do not view the discipline issued to Vladana Tesic or Larissa Rollins as evidence of this violation.

Information concerning employees in the bargaining unit and their terms and conditions of employment, is deemed “so intrinsic to the core of the employer-employee relationship” to be presumptively relevant. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997). Presumptively relevant information must be furnished on request to employees’ collective-bargaining representatives unless the employer establishes a legitimate affirmative defense to the production of the information. *Metta Electric*, 349 NLRB 1088 (2007); *Postal Service*, 332 NLRB 635 (2000). “If an employer effectively rebuts the presumption of relevance, however, or otherwise shows that it has a valid reason for not providing the requested information, the employer is excused from providing the information or from providing it in the form requested.” *United Parcel Service of America.*, 362 NLRB 160, 162 (2015).

When the requested information does not concern subjects directly pertaining to the bargaining unit, such material is not presumptively relevant, and the burden is upon the labor organization to demonstrate the relevance of the material sought. *Disneyland Park*, supra, at 1257; *Richmond Health Care*, 332 NLRB 1304, 1305, fn. 1 (2000). To determine relevance, the Board uses a “liberal, discovery-type standard” that requires only that the requested information have “some bearing upon” the issue between the parties and be “of probable use to the labor organization in carrying out its statutory responsibilities.” *Public Service Co. of New Mexico*, 360 NLRB 573, 574 (2014); *Postal Service*, 332 NLRB at 636.

Here, the requests at issue pertain directly to the housekeepers’ daily work of cleaning the hotel’s guest rooms and are therefore presumptively relevant.

1. Request 1: Status of renovations to old west and Anchorage towers

Request 1 states:

Provide a detailed update on the status of renovations and the extent of work to date. Has work started on the Anchorage tower? If so, when did it start? Has work been completed on the old West Tower? If so, what was the completion date? If not, provide a description of what work remains in what floors/rooms. Provide a description of the status of work

(Jt. Exh. 11.)

Rader responded on December 6, 2018, that the renovations to the old west tower were completed on November 14. Though the Acting General Counsel points out that the Union had not been informed of this completion, I find that this was a timely response to the complaint concerning the old west tower, particularly in light of the earthquake.

With regard to the Anchorage tower, Rader stated the work had begun on September 24, 2018, and provided information about the contractor and assurances that the workers doing the renovation had been adequately trained. I find this is responsive to the portion of the request relating to the Anchorage tower. The request generally asks for a detailed update, but immediately homes in on pointed questions about the specific towers and asks when the work on the Anchorage tower started. The Respondent answered this question and provided information about the work being performed. Given the ambiguity of this request, I find the December 6

correspondence from Rader was timely and responsive. I therefore recommend dismissal of this part of the complaint allegation 7.

2. Request 7: Updates on the status of the guest room bathroom changes to walk-in showers.

Request 7b asks, “Which rooms/floors will be (or have been) converted?” Rader responded on January 4, 2019, that the showers would be located throughout the towers. Rader never answered this specific and direct question regarding which rooms or floors had been or would be converted. I find, therefore, that the Respondent failed to provide a response to this requested information in violation of the Act.

Request 7c asks, “What classifications of employees will be used to clean the glass shower door?” Rader’s January 19, 2019 response does not state what classification of employees would be used to clean the glass shower doors. He testified that because his response stated that the shower doors are expected to be cleaned on both sides, as are the shower curtains, this leads to the inference that the housekeepers would be expected to clean the showers. The Respondent’s obligation was to answer the question, not set forth the standards of how the showers should be cleaned and ask the Union to infer which employees will take on that task. It’s an unnecessarily convoluted response to give when there is a straightforward one-word answer, i.e. housekeepers. I find the Respondent failed to provide this simple requested information in violation of the Act.

Request 7e asks, “What if any tools does the employer consider appropriate for cleaning glass-shower doors? Provide manufacturer’s specifications for all such tools.” Rader responded, in relevant part, “Various cleaning products and tools are made available to the staff members who are invited to give feedback on which products and/or tools work best.” He did not specify any tools nor give any manufacturers’ specifications. Rader testified, “Well, again, I -- I believe that by saying that the shower doors will be cleaned with the same as the glass mirrors and the windows, is saying those are the tools. The current existing tools that are being used are also the tools that can be used for cleaning the shower as well.” (Tr. 425–426.) This response suffers from the same problem as the employee classification response above. In addition, the record shows the housekeepers were provided with squeegees for the showers, which they had not used before. Finally, there is no dispute that the tool manufacturers’ specifications were not provided. Accordingly, I find that the Respondent failed to provide this requested information in violation of the Act.

Finally, question 7f asks, “What if any training has been or will be conducted with respect to cleaning glass-shower doors? Provide copies of all training materials.” Rader did not respond to this request. Even if no training had been conducted and no training was contemplated, Rader was obligated to say so in his response. I find the failure to respond to request 7f violates the Act as alleged.

The Respondent asserts that the Union could have gathered the requested information from other sources such as members of the bargaining unit and/or that the union officials could observe what was needed to answer their questions when visiting the hotel. This is unpersuasive factually, and faulty legally. The housekeepers and union officials were not in a position to

know the answers to most of the information requests, and the union officials in particular were not generally permitted in the guest room areas of the hotel without advance permission. At any rate, it is well established that “absent special circumstances, a union’s right to information is not defeated merely because the union may acquire the needed information through an independent course of action.” *Kroger Co.*, 226 NLRB 512, 513 (1976); see also *King Soopers, Inc.*, 344 NLRB 842, 844 (2005); *B.P. Exploration (Alaska), Inc.*, 337 NLRB 887, 889 (2002); *Detroit Newspaper Agency*, 317 NLRB 1071, 1072 (1995); *Illinois-American Water Co.*, 296 NLRB 715, 724-725 (1989) (rejecting employer's contention it was relieved from providing information it believed was in possession of union or available through union stewards or union records), *enfd.* 933 F.2d 1368 (7th Cir. 1991). Accordingly, I am not persuaded by this argument.

The Respondent also argues the information requests were made in bad faith in an effort to harass the Company. In general, the Respondents have the burden of establishing bad faith in such situations, and otherwise good faith is presumed. *Island Creek Coal Co.*, 292 NLRB 480, 489 fn. 14 (1989).³¹ The requirement is not just that the Respondents show Union bad faith, but that they show that the *only* purpose for the request was a bad-faith purpose. *Hawkins Construction Co.*, 285 NLRB 1313, 1314 (1987). The Respondent has not met this burden. While the Respondent showed that the Union propounded multiple information requests, the evidence belies a conclusion that the requests at issue here were solely for the purpose of harassment. Rather, the information requests directly concerned the ongoing renovation and its impact on the Union’s represented housekeepers. The Respondent has thus not met the burden to prove the information requests were made in bad faith.

The Respondent faults the Union for failing to follow up on the November 2018 request and advise that it needed further information. The basic information requested, however, was not provided. “[I]t is well settled that a union is not required to repeat [its information] request.” *Chapin Hill at Red Bank*, 360 NLRB 116, 119 (2014), citing *Bundy Corp.*, 292 NLRB 671, 672 (1989) (rejecting the employer’s argument that its delay in providing requested information was not unlawful because the union had failed to repeat its information requests during numerous phone conversations during that period). This argument therefore fails.

Finally, the Respondent argues that the failure to provide certain requested information was reasonable under the circumstances, and the Respondent acted in good faith. Generally, an employer has to either provide the information or explain its reasons for noncompliance. *Columbia University*, 298 NLRB 941, 945 (1990), citing *Ellsworth Sheet Metal, Inc.*, 232 NLRB 109 (1977). In addition, when an employer does not have the requested information or needs additional time to gather the information, the employer must convey that it does not have the requested information or needs more time to gather the information, and an unreasonable delay in doing so violates the Act. See *Postal Service*, 332 NLRB 635, 638-639 (2000); *Endo Painting Service, Inc.*, 360 NLRB 485, 486 (2014). As noted above, the information requested was not provided, there was no explanation for the noncompliance, nor was there a request for additional time before or after the January 9, 2019 response. This argument accordingly lacks merit.

³¹ In this regard, the Respondent has the burden of proof backwards. (R Br. 13.)

D. The Extra Room Bonus Remedy

The full remedial order appears below. Because there is a significant dispute about the remedy regarding bonus pay, I am treating it separately here.

On September 23, 2019, the complaint was amended to seek an order requiring the Respondent to pay its housekeepers who have worked since November 5, 2018, for the wages and other benefits lost, including the opportunity to earn additional money for cleaning extra rooms, until (1) The Respondent bargains to agreement with the Union about housekeeper duties in cleaning renovated guest rooms; (2) The Respondent reaches a bona fide impasse in bargaining with the Union; (3) The Union fails to timely request bargaining or commence negotiations after receipt of Respondent's notice of its desire to bargain; or (4) The Union fails to bargain in good faith.

The Acting General Counsel calculated that, when the housekeepers cleaned only the unrenovated rooms in January and February 2018, they accrued bonuses on average at a rate of approximately \$.16 per hour worked. During the January and February 2019, when the housekeepers were cleaning a mix of renovated and unrenovated rooms, they accrued bonuses on average at a rate of approximately \$.09 per hour worked. For August and September 2018, the housekeepers earned bonuses at a rate of approximately \$.16 per hour worked. In April 2019, the housekeepers earned bonuses at a rate of approximately \$.06 per hour worked. In May 2019, the rate was \$.71 per hour worked.³²

The Respondent calculated that total bonuses paid out were as follows: \$232.25 in January 2018, \$448.90 in February 2018, \$999.10 in August 2018, \$583.75 in September 2018, \$257.25 in January 2019, \$606.60 in February 2019, \$242.55 in April 2019, and \$4,535.30 in May 2019.³³ The Respondent also points out that the highest earners, along with four other housekeepers received more bonus money in 2019 than in 2018.³⁴

Under either calculation there does not appear to be a nexus between the extra room bonuses and the renovations.³⁵ I therefore find the Acting General Counsel has failed to prove the housekeepers lost money due to a decrease in extra bonus room pay as a result of the renovations.

³² GC Br. pp. 26–29; GC Exhs. 7–8; Jt. Exh. 17.

³³ R Br. Appendix A.

³⁴ R Br. 27–28.

³⁵ Aside from the lack of correlation, there are practical problems with the bonus room pay as a remedy. For example, Mai Lee was granted her request to clean only bathtub rooms. Under the Acting General Counsel's theory, Lee's ability to earn bonus room money was not impacted by the installation of the new showers so she and others who were accommodated in the same way would need to be excluded from a bonus-related remedy, or at the very least the remedy would need to be reduced. Other housekeepers also cleaned only rooms without the new showers.

CONCLUSIONS OF LAW

1. By changing the housekeepers' duties by requiring them to spend more time per room while still meeting the same room-cleaning quota without bargaining with the Union, failing to provide relevant requested information to the Union, and threatening employees with discipline for failing to meet cleaning quotas, the Respondent has engaged in unfair labor practices affecting commerce within the meaning Section 2(6) and (7) of the Act.

2. By changing the housekeepers' duties by requiring them to spend more time per room while still meeting the same room-cleaning quota without bargaining with the Union, failing to provide relevant requested information to the Union, and threatening employees with discipline for failing to meet cleaning quotas, the Respondent has violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent failed and refused to engage bargaining with the Union over the renovations to the guest rooms that changed to housekeepers' workload and duties while holding them to the same room-cleaning quota, I shall order the Respondent to cease and desist from this action and, upon the Union's request, bargain with the Union.

Having found that Respondent failed and refused to provide requested relevant information to the Union, I shall order Respondent to cease and desist from this action and to provide the information as specified in the recommended Order below.

Having found that the Respondent threatened employees with discipline if they failed to abide by its same room-cleaning quota after its unlawful unilateral changes, including its increased housekeeper workload and duties, I shall order the Respondent to cease and desist from this action.

Finally, the Respondent shall be required to post a notice, in English and Spanish, that assures the employees that it will respect their rights under the Act.³⁶

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁷

³⁶ The bilingual notice is ordered because the record makes clear the Respondent communicates with the housekeepers in English and Spanish. See Tr. 96, 373–374, 394–395, 532, 681.

³⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, CP Anchorage Hotel 2, LLC, d/b/a Hilton Anchorage, Anchorage, Alaska, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Failing and refusing to engage bargaining with the Union over the renovations to the guest rooms that changed to housekeepers' workload and duties while holding them to the same room-cleaning quota;

(b) Failing and refusing to provide requested relevant information to the Union; and

(c) Threatening employees with discipline if they failed to abide by its same room-cleaning quota after its unlawful unilateral changes, including its increased housekeeper workload and duties;

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All full-time and part-time banquet bartenders, banquet captains, banquet servers, banquet housemen, baristas, bellmen, bell captains, bruins bartenders, bus persons, cashiers, coat check/room check attendants, cocktail servers, concierges, cooks, dishwashers/stewards, doormen, front desk/PBX employees, hosts/hostesses, housekeeping clerks, housekeepers/room attendants, housemen, housekeeping inspectors, laundry presser/chute employees, laundry washers, maintenance employees, maintenance supervisors, night auditors, purchasing employees, restaurant servers, and room service employees employed at the facility located at 500 West 3rd Avenue, Anchorage, Alaska.

(b) Rescind all changes made to housekeepers' job duties due to the renovation of rooms, to the full degree practicable, and bargain with the Union over those changes and their effects. To the extent rescission is not fully practicable, bargain over reduction of the room quota per shift for its housekeepers and/or otherwise bargain over the effects of the changes, at the request of the Union.

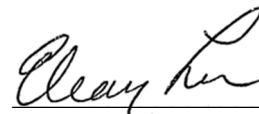
(c) Provide the Union with the information it requested on or about November 20, 2020.

(d) Within 14 days after service by the Region, post at its facility in Anchorage, Alaska copies of the attached notice marked "Appendix"³⁸ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 26, 2018.³⁹

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. March 11, 2021



Eleanor Laws
Administrative Law Judge

³⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

³⁹ This is the date the renovations, which should have bene the subject of bargaining, started.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to engage bargaining with the Union over the renovations to the guest rooms that changed to housekeepers' workload and duties while holding them to the same room-cleaning quota.

WE WILL NOT fail and refuse to provide the Union with relevant requested information.

WE WILL NOT threaten employees with discipline if they failed to abide by its same room-cleaning quota after its unlawful unilateral changes, including its increased housekeeper workload and duties

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and part-time banquet bartenders, banquet captains, banquet servers, banquet housemen, baristas, bellmen, bell captains, bruins bartenders, bus persons, cashiers, coat check/room check attendants, cocktail servers, concierges, cooks, dishwashers/stewards, doormen, front desk/PBX employees, hosts/hostesses, housekeeping clerks, housekeepers/room attendants, housemen, housekeeping inspectors, laundry presser/chute employees, laundry washers, maintenance employees, maintenance supervisors, night auditors, purchasing employees, restaurant servers, and room service employees employed at the facility located at 500 West 3rd Avenue, Anchorage, Alaska.

WE WILL rescind all changes made to housekeepers' job duties due to the renovation of rooms, to the full degree practicable, and bargain with the Union over those changes and their effects. To the extent rescission is not fully practicable, WE WILL bargain over reduction of the room quota per shift for its housekeepers and/or otherwise bargain over the effects of the changes, at the request of the Union.

WE WILL provide the Union with requested information.

CP ANCHORAGE HILTON

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

915 2nd Avenue, Room 2948; Seattle, WA 98714-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/19-CA-241411> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6340.